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REMARKS

Claims 1-9, 12 and 21-36 are pending in this application. In this Response, Applicants have canceled claims 10-11, added claims 21-36, and confirm the election to withdraw claims 13-20 from further consideration made during the Examiner's telephone conversation with Thomas Ewing on June 9, 2003.

The Examiner rejected claims 1-12 under 35 U.S.C. 103 as being unpatentable over Walker in view of the Second Restatement of Contracts ("the Restatement"). Applicants traverse these rejections as applied to pending claims 1-12, and if applied to them, to claims 21-30 because the references in combination do not disclose or suggest the invention as claimed. Furthermore, there is no suggestion to combine the Restatement with Walker to achieve the patented invention. For these reasons, the claims, as currently presented, are patentable over Walker and the Restatement.

Each of pending claims 1-9, 12, and 21-30 recite a method "for sourcing a featured item [or item] for an on-line group-buying sale." (See, e.g. independent claims 1, 6, and 23 *supra*.) To accomplish this sourcing, claim 1 and 6 recite, "to reserve the featured item quantity for the featured item time reservation for sale in the on-line group-buying sale," and claim 23 recites "reserving a specified quantity of the item for a specified period of time for sale in the on-line group-buying sale." Reserving an item for sale in an on-line group-buying sale as claimed beneficially gives the seller the flexibility to purchase the items only if a sale is successful, and further to purchase only the quantity of items sold during the group buy, thereby avoiding the purchase of excess items. This allows the seller to manage his inventory when the outcome of a group-buying sale is unknown and uncertain. However, neither Walker nor the Restatement disclose or suggest the claimed limitations.

Walker discloses "an aggregate conditional purchase offer (CPO) management system for receiving and processing CPOs from buyers for one or more goods or services". (Abstract) Directed towards the management of offers, Walker is generally unconcerned with how the

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inventory of goods is achieved, and thus, it contains little if any description of "sourcing" an on-line group-buying sale. At best, Walker provides:

"a CPO rule for a given agency-based airline can specify that the airline will accept any aggregate CPO for travel between Newark, N.J. (EWR) and Orlando, Fla. (MCO) during the month of October, 1997, provided that (i) the customer travels between Tuesday and Thursday, (ii) the tickets are booked within 21 days of departure, (iii) the price is at least \$165 per ticket, (iv) **K-class inventory is available on all flight segments of the customer's itinerary**, and (v) there are at least two (2) passengers travelling together." (emphasis added) (Walker, 7:22-31)

This excerpt merely describes a rule that an airline would use to determine what offers an airline will accept, not how the airline will source the tickets it sells. As the highlighted section makes clear, the "CPO rule" does not require "reserving" items for an on-line group-buying sale as claimed. Quite the contrary, an offer is only accepted if "inventory is available" at the time of booking. There is simply no discussion or mention in Walker of how this inventory is obtained, and there is no hint that it would be obtained by a supplier "reserving" an item for subsequent sale as claimed.

The Examiner thus attempts to rely on the Restatement of Contracts to overcome this deficiency of Walker. But this reliance is misplaced. The Restatement, as reproduced by Examiner, contains little more than the legal definition of an option contract and illustrations of option contracts. The Restatement discloses "an option contract is a promise which meets the requirements for the formation of a contract and limits the promisor's power to revoke an offer". (§25) The passage cited by the Examiner states:

"A promises B under seal or in return for \$100 paid or promise by B that A will sell B 100 shares of stock in a specified corporation for \$5,000 at any time within thirty days that B selects. There is an option contract under which B has an option." (Page 73, Illustration 1.)

This passage describes the sale of an option to buy stock, rather than stock itself, from A to B. But it does not address how A will source the stock or suggest that B is using the option contract to source a sale to a third party C. Applicants have reviewed the entire Restatement

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excerpt provided, and find no mention of “reserving” an item for subsequent sale as claimed, or any option contract in which B uses the option to reserve a supply of items for sale to a third party C.

Thus, it follows that the combination of Walker and the Restatement does not disclose or suggest the claimed invention. As discussed above, there is scant discussion in either reference of how to source a sale. In Walker, buyers purchase airline tickets from sellers using “conditional purchase offer[s]”. In the Restatement, “A” (the buyer) receives an option from “B” (the seller) to purchase stock at a set price during a set period of time. Even under the most generous interpretation, the combination of Walker and the Restatement merely results in Walker’s buyers obtaining options from the airline to purchase an airline ticket. However, there is no suggestion or hint that options be used to source the tickets in the first place. Thus, the references, alone or in combination, do not disclose or suggest the claimed invention.

Incidentally, even assuming *arguendo* that the combination of Walker and the Restatement did overcome these problems, there is no suggestion or motivation that Walker and the Restatement should be combined to meet the claimed invention in the first place. To establish a prima facie case of obviousness, the Examiner must show a motivation that is specific enough to modify the references to result in the claimed invention. A general statement of a desirable objective cannot by itself provide the required specific motivation. (See, e.g. *In re Anita Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999) (emphasizing that the evidence of a “suggestion, teaching, or motivation to combine... must be *clear and particular*.” (emphasis added))). Here, the Examiner’s alleged “motivation” to “assure that the supply is available for the buyers/customers making purchases on the on-line group buying system” (Office Action, p. 4) is simply too general and vague to suggest the specific combination of Walker with the Restatement in a way that results in the claimed invention. This is because the desired “assurance” could conceivably be reached through any number of means – for instance, stockpiling, vertical integration, long-term supply contracts, or selling only what’s in stock, to name just a few. Thus, nothing in the references themselves or in the alleged “motivation” particularly suggests

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the specific use of an option to provide the reserved quantity of items as claimed. Given the absence of such a suggestion in the references or in the motivation, the combination can only spring from one place: the Examiner's reconstruction of the invention having been instructed by the teachings of the present application, since no where else is there any basis for combining the references as claimed.

Applicants also traverse Examiner's rejection of claims 1-12 (and by extension, claims 21-30, 32, 34, and 36) as being unpatentable over Peterson in view of the Restatement. The references in combination simply do not disclose or suggest the invention as claimed.

Each of the pending claims recite "on-line group-buying." (See, e.g. independent claims 1, 6, and 23 *supra*.) Neither the Restatement nor Peterson disclose this element. As described above, the Restatement, a legal treatise, merely contains a legal description of option contracts. There is no mention of group buying, much less "on-line group-buying." Neither does Peterson disclose group buying or "on-line group-buying" as claimed. At best, Peterson discloses a "Buying Group Inventory Network." (19:63). Although "inventory information [is] shared by the Buying Group Members" (19:67-20:1), there is no disclosure that the members together buy items in an "on-line group-buying" sale as claimed. In other words: the mere happenstance that Peterson uses the words "Buying Group" does not mean that he discloses "online group buying" as claimed.

The combination of Peterson and the Restatement does not create a means to fill this deficiency – the purchase of items by a group of buyers as claimed is not disclosed by Peterson, the Restatement, or their combination. There is no mention or suggestion in either of the references that buying happens except for conventionally, as carried out by individuals; e.g. in the Restatement, "B" sells an option to "A" (Page 73, Illustration 1); and in Peterson, "a first vendor agrees to sell to a second vendor". (Abstract) Combining these two references does not produce "on-line group-buying" as claimed. At best the combination merely suggests that the first vendor sell an "option" to the second vendor. This is, quite clearly, not the claimed invention.

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Accordingly, Applicants submit that the claims are patentably distinct over the cited art. Consideration of this application and the early allowance of all claims herein is requested.

Should the Examiner wish to discuss the above amendments and remarks, or if the Examiner believes that for any reason direct contact with Applicants' representative would help to advance the prosecution of this case to finality, the Examiner is invited to telephone the undersigned at the number given below.

Respectfully submitted,
TOM VAN HORN *et al.*

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By: Colleen Chien
Colleen Chien, Reg. No. P-55,062
Attorney for Applicants
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Tel.: (415) 875-2319
Fax: (415) 281-1350